

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-
311		
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF CITY OF PHILADELPHIA

These Comments are filed by the City of Philadelphia, Pennsylvania ("Philadelphia") in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Philadelphia believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community. We also want to stress that the norms of local franchising for cable services, established over more than the past two decades, are positive, significant, and a foundation we rely upon for financial stability, for civic communications, and for basic governmental operations.

Cable Franchising in Philadelphia

Community Information

Philadelphia is a consolidated city and county with a population of approximately 1,500,000 spread over an area of 135 square miles. Our franchised cable providers are divisions of Comcast Corporation and Time Warner Cable Inc. Our community has negotiated cable franchises for over two decades, since the City Council in 1984 passed an ordinance establishing four franchise areas of approximately equal population and socio-economic characteristics. The franchises awarded in those territories have always been non-exclusive, and the City favors competition. The establishment of the first four franchise territories was conceived as a way to encourage companies to vie with one another to present the optimal package of services to the citizen subscribers, and the cable providers each sought to develop systems that would best demonstrate the advantages of the then-new

multichannel platform. It was envisioned that other companies, particularly those in the telecommunications field, would also develop independent systems to compete with the original cable franchisees. However, telecommunications firms have not shown interest in doing so until very recently, as cable providers have begun to compete with telecommunications providers in furnishing internet access services and offering new forms of telephony.

The City has always welcomed the opportunity to work with companies which have demonstrated interest in establishing franchises for video programming. The City Department of Public Property, Division of Communications and the City Law Department worked extensively with RCN Telecom Services of Philadelphia, Inc. to develop a workable plan for their venture to build a new independent video system in two of the City's franchise areas, and successfully negotiated with RCN an agreement for an Open Video System franchise with terms that were in material respects equivalent to the terms and conditions of the City's four cable television franchises. The plan provided for a five-year schedule for build-out of the Area IV franchise territory, and also a five-year build-out period for the Area III territory, although commencing two years later, i.e., Years 3 through 7 after RCN's start-up in the City. This compares to the four years which Comcast was initially provided to complete the original build-out of Area IV, and five years for Comcast to conduct an upgrade involving replacement of most physical plant in Areas III and IV. Provisions for financial support for School District communications needs, cable modems to public, private and parochial schools, and support for a revolving loan fund to train minorities for jobs in the cable industry also mirrored provisions of the incumbent franchises. The City Law Department prepared a bill for approval of the RCN OVS franchise by City Council, and public hearings on the ordinance and the proposed franchise were held, at which the Division of Communications testified in support of the RCN application. However, RCN later determined not to proceed with its franchise application in Philadelphia at that time. There have since been discussions with other companies that have explored the possibility of entry into Philadelphia's cable services market. The City is familiar with Verizon's plans to launch its own brand of cable services, and the City Division of Communications has expressed interest in commencing franchise discussions with Verizon at the earliest opportunity. Verizon has to date not accepted the City's invitation.

Our Current Franchises

Philadelphia's four franchise agreements each run for fifteen year terms, which began in summer or fall 2000 as the City's initial set of franchise agreements expired; the current agreements will expire in 2015. The City believes that the fifteen year franchise period has met the needs of both the City and the cable operators for stability and a timeframe that encourages long-term investments for upgraded service, while preserving accountability to the public through periodic review and approval by elected officials. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36

months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating any franchise renewals with the incumbent providers. There have, however, been recent negotiations concerning transfer of franchise rights. Time Warner Cable Inc., which had a minority interest in the partnership which held one of the Philadelphia franchises, bought out the interests of its majority partner at the end of 2005. In connection with its pending purchase of the Adelphia cable systems together with Comcast Corporation, Time Warner Cable Inc. is now also intending to exchange its Philadelphia franchise with Comcast Corporation as part of a plan to cluster franchises in particular metropolitan regions. In accordance with federal law and the provisions of the franchise agreement, Time Warner Cable Inc. has provided the City information pursuant to FCC Form 394 and has sought the City's approval to the assignment and transfer of control.

Our franchise agreements require the cable operator to pay a franchise fee to the City in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. The City depends upon approximately \$12.1 million in annual revenue from such franchise fee payments.

We require the cable operators to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on their cable systems. The franchise agreements provide that upon request of the City, the cable operators will provide up to five educational access channels, two governmental access channels, and up to five public access channels. We currently have four educational access channels operated by Drexel University, LaSalle University, Community College of Philadelphia and the School District of Philadelphia. The City Division of Communications arranges programming for the two governmental channels, which cover all City Council meetings and public hearings on proposed ordinances, as well as other civic events; also transmitted in two franchise areas is programming from the Pennsylvania Cable Network, focusing on state government affairs. The City has also been actively working with a diverse group of community representatives to plan for the implementation of a new public access channel for the City. Certain provisions to support a public access program have been included in Philadelphia's franchise agreements; these provide that the cable operators will contribute funds for basic capital needs of a public access program. Each franchise agreement provides that the franchisee will initially purchase and install specified physical facilities and equipment with a value of \$450,000 for the Access Corporation to be established to oversee the public access program, and later in the franchise term contribute a further \$225,000 for equipment replacement. As part of their franchise agreement commitments, the City's cable providers have also agreed to make an annual contribution to the Access Corporation of \$75,000 to \$125,000 per franchise area as may be directed by City Council. Because the City's public access program is still in the planning stage, no payments have yet been called for pursuant to

these provisions. The City is now exploring with the community representatives and cable operators whether these provisions may need to be updated in order to consolidate budgets that had earlier been planned for multiple satellite studio operations, and instead focus resources on developing a larger, more flexible central studio space complemented with mobile equipment. It is critical to the City's plans for public access programming that the franchise agreements provide for essential basic funding. Similarly, governmental access channel commitments are fundamental to the City's ability to communicate with our citizens concerning local public affairs of less interest to the national media. Likewise, educational access channels are relied upon by our local educational institutions to engage in programming that takes their reach beyond the classroom to the homes of the broader public without the mobility, finances, or schedules to support college attendance.

Philadelphia's franchise agreements each contain institutional network ("I-Net") requirements. These have been negotiated specifically to recognize the particular needs and resources within the specific franchise territory. For example, for the franchise area that includes the City's prison complex, the cable provider agreed to construct and maintain a closed fiber optic telecommunications network connecting the City's prison complex to a central interconnection point where each of the four franchise systems are integrated. Together with certain video transmission equipment also provided by the cable operator, and a similar I-Net in the adjacent franchise area that carries the signal to the major municipal courts and offices in Center City, it makes possible video transmission of arraignment hearings between the courts and prison, and substantially reduces the need for costly and time-consuming transportation of detainees between the prison complex at the outskirts of the City and the downtown courts. In another franchise area, a similar closed fiber optic telecommunications network and certain transmission equipment was constructed and maintained to link the primary municipal broadcast tower with the central interconnection point. All franchise agreements also require that a cable connection be provided to all municipal buildings that are in proximity to the cable system, and that cable modems be made available to public, private and parochial schools in the franchise territories. The I-Net provisions have allowed the City to gradually develop an extensive fiber optic network among various municipal buildings that result in a greater efficiencies and cost savings in data communications among governmental departments. In addition, the franchises initially provided that fiber optic connections and cable modems be installed for all police and fire stations in the franchise areas; because the public safety departments established alternative communications systems that were more effective for their work, the cable operators have recently agreed to an amendment with the City's Division of Communications that will instead allow the City to request alternative cable connections with City indoor Recreation Centers, where many after-school and summer programs for children and teenagers can now take advantage of these communications technologies. The I-Net requirements

have enabled a fiber optic network to be built which has become a basic infrastructure for government operations, and they must continue to evolve to keep up with future governmental needs for communications technology.

Our franchise agreements each contain the following requirements regarding emergency alerts: The franchisees shall incorporate into their cable systems a capability that will permit the City in times of emergency to override the audio portion of all channels simultaneously. The franchisees, in consultation with the Commissioner, shall designate a channel which will be used for emergency broadcasts of both audio and video signals, which channel shall be the same throughout the four franchise areas. The franchisees shall cooperate with the City in the use and operation of the emergency alert override system. The City shall secure access to such override system. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. The past year's experiences with disaster response underlines how important such communications can be, and highlights the need for each level of government to prepare to provide effective information when disaster strikes. The franchise agreements can underpin local preparedness.

Our franchise agreements each contain the following customer service obligations, by which we are able to help ensure that the cable operators are treating our residents in accordance with federal standards and the terms they agreed to in their franchises. These customer service obligations incorporate the FCC's own Customer Service Standards appearing at 47 C.F.R.

§ 76.309, but also go beyond them. The franchise agreements require that the cable operators provide an "On-Time Guarantee" that in the event that the franchisee's employee fails to arrive at the subscriber's premises within the promised four hour period for a service installation, the subscriber shall receive free installation, and also in the event that the franchisee's employee fails to arrive within the promised four hour period for a service appointment, the subscriber shall receive a \$20 credit. This measure has resulted in careful scheduling of installation and service calls, and reduces the aggravation of residents who otherwise might make special arrangements to be at home for a service call which never materializes. A further requirement of the franchise agreements is the prohibition of "negative option billing" so that cable subscribers are not billed for services unless they have explicitly directed that they receive them. Incorporation of certain federal standards in the franchise agreements gives the franchising authority a stronger position in enforcing compliance for its resident subscribers, and relieves the FCC from the need to intervene in disputes that can be more effectively handled at the local level. Our franchise agreements provide for liquidated damages penalties for failure to adhere to the operational standards, including the customer service standards referred to above, in the amount of \$2,000.00 per day, which is a powerful incentive for compliance. In addition, the franchise agreements include strong provisions to protect the privacy rights of subscribers; there are liquidated damages

provisions of \$1,000.00 per day for each instance of monitoring a subscriber's terminal, dwelling or business, or cable, signal input device, outlet or receiver without the prior valid authorization of the affected subscriber or a court order, or for making available to anyone information about subscribers obtained by monitoring transmissions or any type of signal from a subscriber's terminal, dwelling or business in violation of the Protection of Subscriber Privacy provisions of the federal Cable Act, 47 U.S.C. § 551 as amended, or certain other federal and state wiretap laws. The franchising system allows the local government to be an effective enforcement authority to strengthen customer service and subscriber privacy protections.

The City has required that each of its franchisees adopt a build-out schedule to ensure the timely provision of service, or upgraded service, to all residents of the franchise territory in a manner that would not discriminate among classes of citizens by race or socio-economic status. The City has had a policy that all franchisees should serve the entire community, although recognizes that construction of a large urban cable system is a major capital project that necessarily takes a period of years to complete. However, the City is also aware that its residents demand even-handed treatment, and that cable providers not be permitted to "cherry pick" certain neighborhoods while leaving residents of other areas without service. The goal must therefore be to plan a build-out schedule in phases that is balanced in its treatment of diverse neighborhoods. When the City worked with RCN, a major focus was planning a phased build-out strategy for the system that was realistic for the cable operator and met the need for equitable service to all City residents. Generally, neighborhoods in Philadelphia have sufficient density to enable service to all residents without high costs for extension of the cable network itself; in cases where a residence is located more than 150 feet from the existing distribution system, the franchise agreements provide for custom installations, by which the resident bears an additional portion of the cost of the extension of the area system to the home; the franchise agreements provide that the franchisee may require an advance payment of no more than 50% of the custom installation charge. Communities rely on the franchising system in order to assure that they will not be left behind as new technologies are rolled out for those who can pay the highest price.

All cable operators in Philadelphia have completed the upgrade of their systems to digital technologies, and all offer high-speed Internet access via the fiber optic cables that provide cable programming. In some areas of the City, cable operators also now offer an option for Voice over Internet Protocol (VoIP) telephone service. The same principles of a complete and even-handed phased build-out that applied to the initial system construction was also applied to the system upgrade work. Citizens have benefited from oversight of the upgrade by the local franchise authority.

Philadelphia's policy is that all franchise agreements should provide for an equitable distribution of services and obligations, although there are no rigid "level-paying-field" or specific "most-favored-nation" requirements. Our practice is that new entrants should be required to adhere to the standards met by incumbents as the initial cable systems were developed. For example, when the Division of Communications was working with RCN Telecom Services of Philadelphia, Inc. on the planning of its venture to overbuild two of the current Comcast franchise areas, the City sought to have RCN and Comcast meet similar requirements. The resulting Open Video System franchise agreement negotiated with RCN and which was submitted for City Council action closely tracked the cable franchise agreements with Comcast for Areas II and IV.

Our franchise agreements each contain the following insurance and bonding requirements: a performance bond requiring compliance with the terms of the franchise agreement, a construction bond requiring completion of system build-out and upgrade requirements on schedules set forth in the franchise agreement, and insurance requirements that the franchisee carry corporate general liability and automobile liability policies with minimum limits of \$10,000,000, as well as workers compensation coverage following state specifications. The City, its officers, employees and agents must be added as additional insureds on the CGL and automobile policies.

The cable franchise agreements grant the cable operators access to the public rights-of-way and compatible easements for the purpose of providing cable television service. Cable franchisees are required to obtain permits from the appropriate municipal office before they may do construction work in the public rights-of-way. For example, if traffic lanes must be closed in order to install equipment on utility poles, application must be made to the Streets Department for a permit for lane closure; this also allows the City police department to be made aware of the need for coverage of the site in order to protect public safety. If underground work is to be conducted, an application for a street opening permit is required, so that the City can ensure that the planned facilities will not conflict with the extensive web of underground utilities that are in place in many City streets. Furthermore, the applicant is then informed of the need to comply with state "One Call" statute on underground excavation, requiring notice to all other utilities with facilities at the site of the excavation, and an opportunity to mark such facilities. To the extent that cable providers pay franchise fees to the City, they are excused from fee requirements in The Philadelphia Code for aerial cables and underground facilities located in the public rights-of-way, but the cable operators do pay a fee to cover the City's right-of-way management costs for processing construction permits for underground facilities.

The franchise agreements each provide for rights of inspection of both records and facilities of the cable providers, as well as audit rights, and liquidated damages in the event of non-compliance with the agreements.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise agreements provide that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: In the event that the City Council, in consultation with the Commissioner of the Department of Public Property, who oversees the City's activities as franchising authority, determines that a material provision of a franchise agreement is affected by subsequent action of the City, state or federal government, the Council may authorize the Commissioner to negotiate modifications to any provision in the franchise agreements to such reasonable extent as may be necessary to carry out the full intent and purpose of the franchise agreement; provided that no such modification shall increase the aggregate obligations of the franchisee without the prior written consent of the franchisee.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: Although the Commissioner of the Department of Public Property, together with counsel in the City Law Department, have the primary obligation to negotiate terms of the City's franchise agreements with the cable operators, these documents are further reviewed and may be amended by City Council, which must vote on ordinances granting or renewing a cable franchise. The proposed franchise agreement with the particular cable operator is reviewed as a part of that process, and its terms and conditions are the subject of a public hearing on the ordinance to grant the franchise. All subscribers are notified of the hearing and of the opportunity to present testimony, by public notice through the print media as well as by announcements on the cable system. Copies of the ordinance and proposed

agreement are made available for any member of the public to review both before and after the public hearing.

Competitive Cable Systems

Philadelphia has welcomed competitive cable and open video service providers interested in providing services to the citizens of one or more of the City's four franchise areas. As stated above, we have worked extensively with and negotiated terms of a proposed Open Video Services franchise with one such company, and have on several other occasions had serious discussions with other enterprises considering a franchise in Philadelphia. In the instance of the Open Video Services franchise application from RCN referred to above, the City was able to negotiate a franchise agreement which was before City Council when the applicant made its decision to rethink its ambitious expansion strategy and not enter the Philadelphia market at that time. Philadelphia has never denied any provider the opportunity to serve in our community. We welcome the opportunity to work with others who may be interested in expanding the range of video services available to our residents.

Conclusions

The local cable franchising process functions well in Philadelphia. As the above information indicates, we are experienced at working with cable providers to see both that the needs of the local community are met and that the practical business needs of cable providers are taken into account.

Philadelphia has also been effective as a franchising authority, able to develop innovative uses of new technologies to meet community needs, to monitor performance, and when necessary ensure compliance. In handling the review of requests for transfers of cable franchises, the City has provided through the public hearing process and City Council deliberations a forum for citizens and service providers to present their concerns and to present their visions of future communications networks. Our citizens rely on the franchise authority's insistence on fair treatment for subscribers, and both incumbent cable providers and new entrants rely on our insistence on even-handed treatment for all service providers in the marketplace.

Local cable franchising ensures that local cable operators are allowed access to the rights-of-way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Philadelphia therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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